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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,855	12/20/2001	Andrea Susan Wulz	16,897	1818

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

8

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/026,855

Applicant(s)

WULZ ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-16, 20, 22 and 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-19, 21 and 23-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1, 4.                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of the invention of Group II in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1-16 and 27-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

The restriction requirement is deemed proper and made FINAL.

3. Applicant's election with traverse of the species of Figure 5 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that 1) the claims listed as generic are inaccurate, 2) the requirement for election is improper because the claims restricted to different species must be mutually exclusive, see MPEP 803.02, and 3) it is not a burden to search all the species. This is not found persuasive because 1) an election requirement is based on the Figures and since the Figures do not show the claimed elements in all the independent claims there are no generic claims, 2) MPEP 803.02 relates to Markush claims which is not relevant to the claims at hand and 3) there are 4 different species which would have to be searched and art considered with regard to and such would be a burden.

The election requirement is still deemed proper and is therefore made FINAL.

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4. Claims 20 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

### *Specification*

#### *Drawings*

5. The formal drawings filed 8-14-03 have been placed in the file. It is noted that such have not been marked as replacement sheets as now required under the revised 1.121 practice. Approval of such Figures is held in abeyance until the issues discussed infra have been resolved.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 17-19, 21 and 23-26, e.g. where is the topsheet, backsheet, laminate?, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to because Figures 5-6 and the description thereof on page 4 are inconsistent, e.g. where are the other sections of the diaper? The embodiment of Example 3? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Description***

8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

9. The abstract of the disclosure is objected to because the abstract should consist of a single paragraph. Legal terminology, i.e. "said", and terminology which can be inferred, i.e. "The present invention relates" should be avoided. Correction is required. See MPEP § 608.01(b).

10. The disclosure is objected to because of the following informalities: On page 4, line 25 is incomplete, i.e. which Example? On page 13, first full paragraph and page 20, second full paragraph, the last line is incomplete. The description of Figures 5-6 on page 4 is inconsistent with the Figures, see discussion supra.

Appropriate correction is required.

***Claim Objections***

11. Claims 17-19, 21 and 23-26 are objected to because of the following informalities: in the preamble of claim 17, "absorbent article" should be --composite--. In section a), "calculated...herein" should be deleted, i.e. implicit due to definition in the definitions section. On line 5, after "Rate", --(WVTR)-- should be inserted, see claim 26. In claim 21, the claim should end with a period. Appropriate correction is required.

***Claim Language Interpretation***

12. The directional words are defined as set forth on page 6, lines 15-20 and last six lines. "Liquid" and "liquid communication" are defined as set forth on page 6, lines 21-25. "Multilayer laminate" is defined as set forth on page 7, line 24. "Nonwoven", "nonwoven" fabric or web, "region", "area" and "spunbonded fibers" are defined as set forth at page 8. A technique of determining WVTR value is set forth in the paragraph bridging pages 9-10. "Resilient material" is defined as set forth in the paragraph bridging pages 14-15.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 17-19, 21, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer '300 in view of Grykiewicz '785.

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With regard to claims 17-19, 21 and 26: See Figures, col. 4, lines 25-35, i.e. the backsheet is 30, the topsheet is 28, the absorbent body is 32 and the undulation of resilient material is 46, see col. 16, lines 16-18, 33-37, 44-49, col. 17, line 47-col.18, line 42, col. 22, lines 30-38, col. 23, lines 39-50 and col. 19, lines 12-43. With regard to the backsheet, see col. 6, line 64-col. 7, line 35, especially lines 29-33, which disclose that the backsheet can be microporous material and certain specific films but does not set forth explicitly the WVTR. However see Gryskiewicz '785 at col. 15, lines 17-38 which, at the very least, teach interchangeability of specific films which are the same as those taught by Sauer for sheets of the claimed WVTR and, at the very most, teach those specific films have the claimed WVTR. Therefore, at the very most, Gryskiewicz teaches the backsheet of Sauer has the claimed WVTR because it has the same films as disclosed by Gryskiewicz which have the claimed WVTR. Alternatively, at the very least, to make the backsheet of Sauer a backsheet of the claimed WVTR instead would be obvious in view of the interchangeability as taught by Gryskiewicz.

With regard to claim 23: See cited portions supra. The term "highly breathable" is considered relative and thus, the backsheet of Sauer and Gryskiewicz is considered "highly breathable".

15. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer and Gryskiewicz as applied to claim 23 above, and further in view of Odorzynski et al '341.

Applicant claims the backsheet of a film/spunbond nonwoven laminate whereas Sauer and Gryskiewicz teach a film or coated or treated nonwoven. However see Odorzynski '341 at col. 6, line 47-col. 7, line 18, i.e. interchangeability of films or treated nonwovens with film/spunbond nonwoven laminates. To make the backsheet of Sauer a film/spunbond

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nonwoven laminate instead would be obvious in view of the interchangeability as taught by Odorzynski et al.


*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art references are the US versions of the references cited in the PCT and/or include a backsheet with a WVTR which is the same as claimed and/or include an undulation.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Karin M. Reichle  
Primary Examiner  
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KMR